TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 275

THE UNITED STATES OF AMERICA, EX REL. HUBERT JAEGELER, PETITIONER,

vs.

UGO CARUSI, COMMISSIONER OF IMMIGRATION AND NATURALIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 24, 1951.

CERTIORARI GRANTED NOVEMBER 5, 1951.

SUPREME COURT OF THE UNITED STATES

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INDEX

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[fol. a] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10373

UNITED STATES OF AMERICA, ex rel. HUBERT JAEGELER, Appellant,

v.

UGO CARUSI, Commissioner of Immigration and Naturalization, and Carl Zimmerman, District Director for District No. 2, Philadelphia, Appellees

Appeal from the Final Order of the United States District Court for the Eastern District of Pennsylvania, Dismissing Habeas Corpus

Appendix to Brief for Appellant—Filed February 2, 1951

[fol. 1] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOCKET ENTRIES

1947

May 15. Petition for writ of Habeas Corpus and Order of Court directing writ to issue, filed.

May 15. Writ of Habeas Corpus exit.

May 16. Writ of Habeas Corpus returned "on May 15, 1947 Service accepted by Ugo Carusi" and filed.

May 21. In open Court. Hearing continued to Thursday, May 29, 1947.

May 21. Return of the United States to writ of Habeas Corpus filed.

May 28. Traverse to return of U. S. to writ of Habeas Corpus filed.

May 29. Hearing on question of jurisdiction. C. A. V.

June 16. Memorandum Opinion, Kirkpatrick, J., finding that restraint of liberty is sufficient to support the writ, filed.

June 24. Hearing. C. A. V.

July 15. Opinion, Kirkpatrick, J., directing that case go to trial on fact issue, filed.

1948

June 8. Plaintiff's Interrogatories to Defendants and Order of Court granting same and directing answer within sixty days from service, filed.

Aug. 5. Defendants' motion to discharge the writ, and in the alternative to prevent the taking of depositions of Secretary of State, filed.

Aug. 5. Order to place case on argument list, filed.

Sept. 7. Affidavit by Relator in opposition to Defendants', motion to dismiss Writ of Habeas Corpus or in the alternative to prevent the taking of depositions of Secretary of State, filed.

[fol. 2] Sept. 13. Hearing sur motion to discharge writ. C. A. V.

Sept. 30. Order of Court denying Defendants' motion to discharge writ and granting Defendants' motion to prevent the taking of the deposition of the Secretary of State, filed.

1950

Jan. 5. Petition for rehearing on Defendants' motion to discharge writ, etc., filed.

Jan. 5. Answer to Petition for rehearing on Defendants' motion to dismiss writ, etc., filed.

Aug. 4. Order to place case on Argument List, filed.

Sept. 6. Hearing on Petition for rehearing on motion to discharge writ of Habeas Corpus. Motion denied.

Oct. 9. Order of Court granting re-argument; dismissing writ of Habeas Corpus and remanding Relator to custody of respondents, filed. 10-10-50 noted.

Dec. 5. Relator's notice of appeal fined. c. c. to G. A. Gleeson.

Dec. 5. Copy of Clerks notice to U. S. Court of Appeals filed.

Dec. 28. Original Record transmitted to U. S. Court of Appeals.

IN UNITED STATES DISTRICT COURT

ORDER—Filed 5-15-47

And now, May 15, 1947, upon consideration of the foregoing Petition, the Court orders and directs that the Writ of Habeas Corpus as prayed for be issued forthwith hearing fixed for Wednesday, May 21, 1947 at 10 o'clock.

Geo. A. Welsh, U. S. District Judge.

[fol. 3] IN UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Judges District Court of Eastern District of Pennsylvania:

The Petition of Hubert Jaegeler, respectfully represents:

1. This is a petition for a Writ of Habeas Corpus directed to (1) Ugo Carusi (one of the Defendants) who is the Commissioner of Immigration and Naturalization for the United States and whose principal office is in Franklin Trust Building, Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania, and who has jurisdiction over the whole of the United States and, (2) Carl Zimmerman, Director of the Second Immigration District, which embraces the County and City of Philadelphia, and whose office is in the Pennsylvania Building Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania, and who has jurisdiction of Relator subject to the authority of the Commissioner, and (3) such other persons, if any, as may have jurisdiction over Relator or custody of him; and in support of such Petition Relator presents the following facts:

2. Hubert Jaegeler, Relator, was born March 20, 1897 in Brunswick, Germany and lawfully immigrated to the United States as a quota immigrant from Germany on the North German Lloyd steamship "Bremen" arriving in New York on or about September 30, 1925, and after being duly inspected he was thereupon admitted to the United States for permanent residence under the proper aforesaid name. After residing at divers places in Brooklyn, New York, and

St. Albans, Long Island, he finally took up a permanent [fol. 4] residence at 2112 West Venango Street, Philadelphia, Pennsylvania in the year 1936.

3. That Relator inter-married with Marie Eder at Jamaica, Long Island on May 8, 1930 and the parties have lived together as husband and wife from that time to the present, except for that period during which the Relator was interned and separated from his wife as hereinafter more specifically set forth.

4. That in the year 1933 Relator received permission to visit Germany, which he did for a period of about one month and returned to the United States on a re-entry permit.

5. That about June 1934 Relator applied for his first Naturalization Papers at New York.

6. That Relator's wife was naturalized at Mineola, New York about the year 1934, Petition No. 12321, Certificate No. 3610119.

7. That Relator was employed by Brunswick Asbestos Company, 1416 Wood Street, Philadelphia as a cutter of asbestos switchboards, and so forth, and was living with his wife at the aforesaid address 2112 West Venango Street, Philadelphia, Pennsylvania at the time of his hereinafter recited apprehension.

8. That on or about to wit; December 9, 1941 at about 1:30 A. M. the Relator was taken into custody by agents of the Federal Bureau of Investigation at his said home as an "enemy alien" under a warrant of arrest issued on behalf of the Federal Authorities. Relator was subsequently taken before a "Alien Enemy Hearing Board" in Philadelphia, at which time he was told that he was arrested as an enemy alien who might be dangerous to the national security and [fol. 5] he was asked if he had any statement to make. Relator replied that while he might be taken as an enemy alien, he was loyal and faithful to the United States and its Constitution and Prineiples, that he had never done anything prejudicial or injurious to the welfare of the Country and he demanded to know the charges and specific acts of which he was alleged to be guilty and he demanded his release. Relator was not then or any subsequent time advised in anywise as to the charges against him and he was immediately interned at the Immigration Station at Gloucester, New Jersey.

9. That on February 1, 1942 Relator was notified that he was interned for the duration of the War and Emergency.

10. In March 1942 he was sent to a military camp at Upton, Long Island and after ten days duration he was moved to a military camp at Camp Meade, Maryland. In November 1942 he was moved to Camp Forrest, Tennessee where he remained until May 1943 when he was moved to the Immigration camp for men at Bismarck, North Dakota. He remained there until May 1944 when he was sent to a family concentration camp at Ceagorville, Texas. His wife, Marie Jaegeler was permitted to live with him at the concentration camp, and she did so, remaining there from May 4, 1944 until May 9, 1946, when she returned to Philadelphia.

11. That on May 15, 1945 the camp at Ceagorville, Texas was closed and Relator was then sent to a similar camp at Crystal City, Texas where his wife joined him.

12. That sometime in August 1945 Relator was notified that the Attorney General had determined to repatriate him, but that he (Relator) could obtain a hearing before a Repatriation Board upon a request in writing. Such a [fol. 6] request was made by Relator and a hearing was had in October 1945 at Crystal City, Texas.

13. That in the month of January 1946 Relator was notified that the said Repatriation Board had recommended Relator's removal from the United States because "he was determined to be dangerous to the public peace and safety of the United States."

14. That on May 3, 1946 Relator received a formal notice from the Attorney General's Office to the effect that the Attorney General had determined to return Relator to Germany, that Relator would receive thirty days notice of such deportation, but that the thirty day period would not begin to run until Relator had arrived at Ellis Island, New York.

15. That on or about to wit April 15, 1947 Relator was given a parole for thirty days under the regulation relating to alien enemies, and he thereupon signed an agreement dated April 17, 1947 No. 5389866, File No. 4494-142 by which he was permitted to return to his home in Philadelphia, under the sponsorship of Daniel S. Lane, District Parole Officer. Relator was and still is required to make personal report to the District Parole Officer on Tuesday and Friday of each week at his office, Room 1219 Pennsylvania Build-

ing, 42 South Fifteenth Street, Philadelphia, Pennsylvania, and is further required to report to and surrender himself to the District Director at Philadelphia not later than May 15, 1947.

16. That during the whole of such time to wit: December 9, 1941 at 1:30 A. M. to present time, Relator has been under constant guard and custody in various detention camps and is now in custody of the Immigration and Naturalization Department under parole to the District Director at Philadelphia, Pennsylvania.

[fol. 7] 17. Relator is now living at 1204 Washington Lane, Philadelphia, Pennsylvania during continuance of the above mentioned parole and subject to the jurisdiction of the District Director of Immigration and also within and subject to the jurisdiction of your Honorable Court.

18. That Relator does not know and no cause or reason for his detention and restraint has ever been given or stated to Relator, except the implications arising from:

(a) Internment as an alien enemy, and

(b) The determination by the Attorney General of the United States that Relator "was determined to be dangerous to the public peace and safety of the United States."

19. That the Relator has never at any time been served with or given copies, nor informed as to the charges preferred against him, nor of the specific acts of which he is accused; that he was never confronted with any witnesses nor any testimony or evidence nor given any opportunity to cross-examine such witnesses or refute such testimony or evidence; nor was he ever advised that there were any witnesses who had or could testify against him, nor that there was any existence of any evidence charging him with such derelictions; that he was never represented by counsel; that at the two hearings before the two Boards the procedure was not in accordance with the accepted method of procedure in any Court of the United States; nor did the hearings comply with the requirement of the Federal Constitution or the Bill of Rights, nor were they in conformity with requirements of the Naturalization Code; that at no time was there a judicial determination of Relator's guilt; and that at no time was Relator permitted to know what charges he was required to contradict and defend.

[fol. 8] 20. That under the provision of the Naturalization Code no appeal is allowed or is provided for from the determination by the President of the United States or his Attorney General, although they provide for a hearing before deportation.

21. That under the several acts of Congress and the Presidential Proclamation the District Court having jurisdiction of Relator also has jurisdiction and power upon complaint, to arrest Relator and accord him a full examination and hearing, but no such action was ever taken.

22. That Relator has been unlawfully detained and restrained of his liberty by respondent as hereinbefore described, and that any further detention and restraint for the purpose of removing Relator were and continue to be unlawful for the following reasons:

(a) Relator since September 30, 1925 has been a legal resident of the United States and during such time has never been guilty of any offense against the peace and security of the United States.

(b) That Relator was and still is racially and legally eligible for Naturalization.

(c) That Relator is the husband of a citizen of the United States.

(d) That Relator has strictly complied with the Edict of the Presidential Proclamation No. 2526 issued December 8, 1941, requiring alien enemies to comport themselves diligently and faithfully to the laws of this Country.

(e) That the hearings given Relator before the Alien Enemy Hearing Board at Philadelphia, December, 1941, and before the Repatriation Board October, 1945, were not hear-[fol. 9] ings held in conformity with the accepted procedure and honesty of purpose customary in trying issues within the United States.

(f) That the Presidential Proclamation No. 2655, dated July 14, 1945 delegated to the Attorney General the right to determine that Relator and others were dangerous to the public peace and safety, and such delegation of authority is contrary to provision of the Constitution of the United States (Article I, Section I, and Article 6, Section 2).

(g) That the said delegation of authority to the Attorney General was to be based on the fact that the alien enemy

had adhered to the aforesaid enemy government, and no such proof of that fact is in evidence in the record.

(h) Because Bills of Attainder or Ex Post Facto Laws are unconstitutional (Artiele 1, Section 9, Const.).

(i) Because the conduct imputed to Relator is treasonable and no person may be convicted of treason except on the testimony of two witnesses to the same overt Act or on confession in open court (Article 3, Section 3, Const.).

(j) Because the incarceration and detention of Relator was and is an invasion of Relator's personal right to be secure in his person, etc. (4th Amend. Bill of Rights, Const.).

(k) That Relator is held to answer to an infamous crime without a presentment or indictment of a grand jury and because Relator has been deprived of his life and liberty without due process of the law (Const. 5th Amend.).

(l) Because Relator has been deprived of an open and public trial, refused information of the nature and cause of the accusations against him, and denied the right to confront the witnesses (Const. 6th Amend.).

[fol. 10] (m) That by provision of the alien enemy Act of 1798 (Section 4087 revised St.), Relator as a resident alien enemy was subject to only internment during hostilities, but could be removed only upon complaint and a hearing or trial in open court.

(n) That Section 220, Title 50 of the Acts of Congress provided that resident alien enemies are removable only by the Court.

(o) That as will appear by Congressional Record for July 30, 1919, pages 3361 to 3377, the Act of Congress of May 10, 1920, at 41 Stat. 593 was enacted because Congress in its debates had determined that internment itself was not prima facie evidence of undesirability, and that every internee must be given a full hearing in all deportation cases, and because they were advised that the Supreme Court decision already held that no executive officer could deport an alien without giving him a full and fair hearing as required by the principles of due process of law as understood at the time of adoption of the Constitution.

(p) That under the provisions of Resolution XXVI on Expulsion and Non-Admission of dangerous persons, the Emergency Advisory Committee for political defense (of

which the United States is a member) of April 12, 1946, Relator is exempted from expulsion.

(q) That by reason of Presidential Proclamation of December 31, 1946 declaring an end of hostilities (not an end of the emergency) Relator is no longer a subject of a hostile nation.

23. That a Writ of Habeas Corpus is the proper method to determine the right of detention of the person of Relator. [fol. 11] 24. That Relator previously filed a Petition for a Writ of Habeas Corpus with your Honorable Court, Civil Cause No. M-1171 and after argument the Petition was dismissed for lack of jurisdiction. The Relator at the time being interned in Crystal City, Texas.

25. That this Petition for Writ of Habeas Corpus is not inconsistent with the prior Petition nor its decision rendered therein, and that the decision in the prior case is not res adjudicata.

26. Wherefore Relator prays that a Writ of Habeas Corpus be issued directed to Ugo Carusi, Commissioner of Immigration and Naturalization and to Carl Zimmerman, District Director for District No. 2 at Philadelphia, requiring them and each of them to appear, and cause to be brought before your Honorable Court, the person and body of Relator and to show the causes for his detention if any they have, and to do and abide by such decisions and orders as your Honorable Court in the premises may direct, and your Petitioner will ever pray.

Hubert Jaegeler.

May 14, 1947.

George C. Dix, New York, New York; Gordon Butterworth, 1500 Walnut Street Building, Philadelphia 2, Penna., Counsel for Relator.

[fol. 12] *Duly sworn to by Hubert Jaegeler. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

RETURN TO WRIT OF HABEAS CORPUS

Now, comes Gerald A. Gleeson, United States Attorney for the Eastern District of Pennsylvania, for answer on behalf of Ugo Carusi, Commissioner of Immigration and Karl I. Zimmerman, District Director for District No. 4 at Philadelphia, Pa., and makes return to the writ of habeas corpus.

The respondents are unable to produce before this court the body of the relator, Hubert Jaegeler as is in the said writ commanded for the reason that the said Hubert Jaegeler is not and was not at the time of the issuance of the Writ of Habeas Corpus, in the custody of either of the said respondents.

[fol. 13] The relator, Hubert Jaegeler is presently on parole from the custody of the Attorney General of the United States by virtue of an application for parole made by him on March 12, 1947, a copy of which is attached, marked Exhibit "A". The terms and purposes for which the parole was granted are set forth in a letter to relator dated April 2, 1947, a copy of which is attached and marked Exhibit "B".

Parole was effected on April 15, 1947 at Crystal City, Texas, and was to expire on May 15, 1947; an application of the relator on May 6, 1947 for an extension of parole was denied on May 9, 1947 and relator duly notified thereof on May 13, 1947. At the time of the issuance of the writ relator was at liberty under the said parole. After service of the Writ of Habeas Corpus on the respondents the parole was extended to May 22, 1947 and relator is now at liberty under such extension.

By way of answer to the allegations in the Petition for the Writ of Habeas Corpus issued in this cause, respondents say:

1. The allegations of paragraph one are admitted except that respondents aver that relator is not in custody but on parole as hereinbefore set forth.
2. The allegations of paragraph two are admitted.
3. The allegations of paragraph three are admitted.
4. The allegations of paragraph four are admitted.
5. The allegations of paragraph five are admitted.

6. The allegations of paragraph six are admitted.

7. The allegations of paragraph seven are admitted.

8. Relator was taken into custody by virtue of a Presi-
[fol. 14] dential warrant issued for his apprehension as a potentially dangerous enemy alien. The relator had a hearing before the Alien Enemy Hearing Board, was fully advised of the reasons for believing him to be a potentially dangerous enemy alien and after fully hearing what relator had to say on his own behalf, the Board recommended to the Attorney General that relator be interned. The Attorney General on February 1, 1942 ordered the relator interned after finding him to be a potentially dangerous enemy alien.

9. The allegations of paragraph nine are admitted.

10. The allegations of paragraph ten are admitted.

11. The allegations of paragraph eleven are admitted.

12. The allegations of paragraph twelve are admitted.

13. The allegations of paragraph thirteen are admitted.

14. The allegations of paragraph fourteen are admitted.

15. The allegations of paragraph fifteen are admitted except that relator is not required to surrender himself to the District Director at Philadelphia but is required to depart from the United States by May 22, 1947 or surrender himself at Ellis Island, New York on that date.

16. The allegations of paragraph sixteen are denied. Relator is not in custody of either of the respondents but is at liberty under parole as aforesaid.

17. The allegations of paragraph seventeen are admitted except relator is at liberty under parole as aforesaid.

18. The allegations of paragraph eighteen are denied. [fol. 15] Relator has full knowledge of the cause of his internment and order for his removal.

19. The relator is an enemy alien of the United States and can be compelled to depart from the United States for no other reason than that he is an enemy alien.

20. Admitted.

21. Admitted. Respondents aver that the District Court's jurisdiction is cumulative.

22. (a) Denied.

(b) Admitted.

(c) Admitted.

(d) Relator was in custody and was without power to do otherwise.

(e) Denied.

(f) Denied.

(g) Denied.

(h) This averment is immaterial.

(i) Denied. Relator is not a citizen of the United States.

(j) Denied. Relator is an enemy alien of the United States.

(k) Denied.

[fol. 16] (l) Denied.

(m) Denied.

(n) Denied.

(o) Denied.

(p) Denied.

(q) Denied. Relator is still an enemy alien of the United States.

23. Respondents admit habeas corpus is proper procedure to determine the cause of relator's detention if he is detained. Respondents aver relator is not detained but is on parole as hereinbefore set forth.

24. The allegations of paragraph twenty-four are admitted. Respondents aver that relator has appealed the dismissal of the Writ of Habeas Corpus in Civil Cause M-1171.

25. The allegations of paragraph twenty-five are denied.

26. The respondents cannot produce the body of the relator because he is not in the custody of either of them.

27. Relator's petition fails to set forth a cause of action justifying the relief prayed.

Wherefore, respondents pray that the Writ of Habeas Corpus be dismissed.

Gerald A. Gleeson, United States Attorney.

[fol. 17] EXHIBIT "A" TO RETURN TO WRIT OF HABEAS CORPUS

Dist. File No. 935/540.
C. O. File No. 39/495.
D. J. File No. 146-13-2-62-15

This is to acknowledge that ——

(1) Upon May 3, 1946 I was served with an order of the Attorney General dated ———— directing my removal from the United States pursuant to the authority contained in the Alien Enemy Act of 1798, Presidential Proclamation of July 14, 1945, and regulations issued thereunder.

(2) I have not heretofore applied for parole, and on March 12, 1947 I was offered parole for a period of 30 days without restraints other than the requirement that I report to and keep the Immigration and Naturalization Service informed of my whereabouts during said period of parole, and I understand that said parole is granted for the purpose of enabling me to arrange my affairs incident to effecting my departure from the United States.

(3) I am willing to accept parole for the following reasons:

Subject to the objection of my attorney I am willing to accept a 30 day parole to Philadelphia, Pa. to take care of business and personal affairs.

(4) I am ———— a party to litigation concerning the right of the Government to cause my removal from the United States, and the nature and status of such litigation is as follows:

[fol. 18] (5) I do ——— intend to depart from the United States in accordance with the aforementioned order. (If in the negative, give your reasons.)

I do not care to make a statement in regard to question #5 and am signing this statement subject to the approval or objection of my attorney. Should it be inevitable that I depart from the U. S. then I will do so.

(s/d) Hubert Jaegeler (Name) Hubert Jaegeler.

Witness: (s/d) E. D. McAlexander.
Date: March 12, 1947.

EXHIBIT "B" TO RETURN TO WRIT OF HABEAS CORPUS

U. S. Department of Justice, Immigration and Naturalization Service, Crystal City Internment Camp, Crystal City, Texas

April 2, 1947.

File No. 935/540.

Mr. Hubert Jaegeler, Crystal City Internment Camp, Crystal City, Texas.

DEAR MR. JAEGELER:

Your attention is invited to the fact that, under the terms of your removal order, you may proceed to any country of your choice, if arrangements can be made. No exit permit is required to leave this country, and you are (and have been) free to depart at any time under such order.

[fol. 19] The thirty (30) day parole offered is to afford you opportunity to make arrangements to depart from the United States and/or settle any necessary business and personal affairs. Upon arranging to enter another country, you must notify the Immigration and Naturalization Service of the place and date of intended departure, so that your departure may be verified.

Should you be unsuccessful in departing from the United States, or if you decline parole, immediate steps will be taken to proceed with removal arrangements. If you are involved in litigation, actual removal will take place as soon as such litigation has reached a point where our Department feels it is no longer bound to delay such action.

No extension of the thirty (30) day parole can be granted you because of failure to secure permission to enter some other country. However, if after diligent effort, you are unable to dispose of personal and business affairs, the Central Office will consider an extension.

Yours very truly, L. T. McCollister, Acting Officer in Charge.

In United States District Court

Traverse

To the Honorable Judges District Court of Eastern District of Pennsylvania:

Relator for his Traverse to the Return herein respectfully alleges:

1. Relator denies the allegations of Paragraph No. 15 of the return because in letters dated May 15, 1947, and May [fol. 20] 21, 1947, the Respondents have extended Relator's parole to June 2, 1947.

2. Relator denies the allegation of Paragraph No. 19 of Return.

3. Relator submits that the jurisdiction of the District Court is not merely cumulative as averred in Paragraph No. 21 of the Return, but being a legally admitted resident of the United States he is entitled to trial in a Court or to a full and fair hearing before being removed from the Country.

4. Relator denies the allegations of Paragraph No. 22 (d) of the Return and reaffirms that his compliance with the presidential orders as well as all other laws was of his own volition.

5. Relator traverses all the denials contained in Paragraph No. 22 of the Return.

6. Relator denies that he is or has been free to proceed to any Country of his choice and denies that he has been free to depart at any time under the removal order.

7. Instead of permitting Realtor to depart from the United States the Respondents acting on their own initiative or under instructions or in cooperation with the Attorney General or the State Department have effectively prevented and in the future intend to prevent Relator from departing to any Country of his own choice and intend to deport him to Germany. This has been, and is being, accomplished by the use of three lists prepared by the Attorney General and State Department which lists have been circulated and distributed among the Governments of

all American and European Countries by the State Department. Said three lists are as follows:

[fol. 21] (a) A list containing the names of 51 persons brought to the United States from Central and South American Countries during hostilities for internment.

(b) Another list containing the names of 417 persons resident in the United States, some of whom are native born.

(c) The third list contains approximately 600 names of persons domiciled in Spanish-America who were brought to the United States from other American Republics during hostilities and were then exchanged to Europe for American Nationals and, who now with their native born American wives and children are in Germany and trying to return to their domiciles in the Western Hemisphere.

In connection with the distribution of said lists the Secretary of State has informed the Governments of such Countries that he deems the return of such persons to be prejudicial to the future security and welfare of the Americas, and that he wishes the said Governments to refuse to issue to said persons visas or permissions to immigrate. In conformity with the said requests of the Secretary of State, such other Governments have refused to issue Visas or travel documents to said persons, and in several cases where they had already issued Visas, they yielded to the demand of the Secretary of State that said permissions be cancelled.

After the decision of the United States Circuit Court of Appeals for the Second Circuit in the case of "Ex. Rel. Hans VonHeyman vs. Watkins," 159 Fed. 2d 650, holding that the detention of Relator for the purpose of removing him to Germany was unlawful because he had been denied an opportunity to depart voluntarily from the United States, the Secretary of State, through his Embassies, informed each of the other American Governments that the release of internees on parole to enable them to depart voluntarily was merely a technicality and that upon expiration of their thirty day paroles, the internees would be reapprehended [fol. 22] and deported to Germany. At the same time the Secretary of State, through his agents, informed the other American Governments that he did not wish the return of

any of the persons named on the lists to any other American Republic.

Relator's name appears on the list of 417 residents of the United States. Relator has been informed by his attorneys that by reason of such procedure it is useless for him to make application to any Consul to go to any other American Country, or any European Country other than to Germany, and Relator does not desire to return to Germany. Relator alleges that as long as such restraint continues he is not able to depart from the United States voluntarily to a Country of his choice and is therefore unlawfully restrained of his liberty by Respondents.

8. In December 1945 the Allied Control Council asked that relators and other persons deemed by the Attorney General to be dangerous be delivered to their country of origin, in violation of existing extradition treaties.

9. On April 12, 1946 the Emergency Advisory Committee for Political Defense, of which the United States is a member, adopted Resolution XXVI on the Expulsion and Non-Admission of Dangerous Persons. Said resolution sets forth the circumstances that exempt from expulsion or suspend the effects of the measure. They are: adherence to the Axis by coercion; retraction of adherence to the Axis; and personal or family situation, such as that the spouse or children of the allegedly dangerous persons are nationals of an American Republic, or that expulsion would endanger the person's life because of the state of his health.

10. That he would also be compelled, as have been others, to appear before an extra-ordinary tribunal or court set up [fol. 23] by our Military authorities, although he could not so be compelled here in the continental United States.

Gordon Butterworth, George C. Dix, of Counsel for the Relator.

23 May 1947.

IN UNITED STATES DISTRICT COURT

MEMORANDUM

Before Kirkpatrick, J. (July 15, 1947.)

Most of the questions of law raised by the relator have already been decided against him by various courts of the United States, some of them, many times. The only one of them which need be mentioned is that based upon the restrictive phrase "Whenever there is a declared war" with which the Enemy Alien Act begins.

When Congress passed the Act the members believed that they stood upon the threshold of war. It was also anticipated, with reason, that hostilities might begin and continued over an indefinite time without a formal declaration of war. Congress was also confronted with what it conceived to be the constitutional limitation of Article 1, Section 9 of the Constitution and for that reason, as well as possibly a reluctance to commit the assumption of the drastic powers of the Act to judgment of the President alone, chose to make the executive power dependent upon the existence of a "declared" war or actual or threatened invasion.

It is not likely that Congress was oblivious of the possibility that actual hostilities might end before a peace treaty became effective to end the "declared" war. Nevertheless they put no terminal limitation upon the power of the President short of the end of the declared war, al- [fol. 24] though they might easily have limited it to the end of hostilities. It seems, therefore, that the intention of Congress was to make the powers of the President coincide and end with a state of war in the technical sense—begin with the declaration and end with the treaty. The fact that the aliens subject to the presidential power were described as native or subjects of the "hostile" nation does not indicate a different intention. The words are naturally and logically descriptive of subjects of a nation as to which a state of war exists and avoid circumlocution.

However, the traverse raises the fact question that, by reason of physical restraint, plus action of the State Department by which all American and foreign governments

have been induced to refuse visas to the relator, he is not able to depart from the United States voluntarily to a country of his choice. The Alien Enemy Act authorizes the President to "provide" for the removal of only such enemy aliens who, not being permitted residence in the United States, neglect or refuse to depart therefrom. The substance of the traverse is the President is "providing" for the relator's removal to Germany before he has refused to depart. Of course, he has refused and is refusing to go to Germany but his position is that the refusal contemplated by the Act means refusal to leave the country after free opportunity has been afforded him to go where he pleases.

The question thus raised was alluded to at the argument but was not fully discussed. I think it proper the fact issue be tried.

[fol. 25] IN UNITED STATES DISTRICT COURT

DEFENDANTS' MOTION TO DISCHARGE THE WRIT AND IN THE ALTERNATIVE, TO PREVENT THE TAKING OF THE DEPOSITION OF THE SECRETARY OF STATE

The defendants move the Court to discharge the writ of habeas corpus herein and, in the alternative, to make an order that the deposition of George C. Marshall, Secretary of State, proposed by the relator herein, shall not be taken.

The grounds for the motion to discharge the writ are that the allegations of the pleading herein, as amplified and explained by the affidavits filed in support hereof, show that there is no genuine issue as to any material fact and that the defendants are entitled to the discharge as a matter of law.

The grounds for the motion, in the alternative, to prevent the taking of the deposition of the Secretary of State are that all material facts sought to be elicited by relator's proposed interrogatories are fully set forth in the affidavits filed herewith, and that all other inquiries made therein are irrelevant and seek to subject the Secretary to judicial inquiry into aspects of the official conduct by the Department of State of foreign affairs which are privileged.

This motion is based upon the record and files herein, together with the affidavits filed in support hereof and the Memorandum of Points and Authorities in support thereof.

Gerald A. Gleeson, United States Attorney; James P. McCormick, Assistant United States Attorney. Of Counsel: Enoch E. Ellison, Special Assistant to the Attorney General; Paul J. Grumbley, Attorney, Department of Justice.

[fol. 26] AFFIDAVIT

Edward E. Hunt, being duly sworn, says: That he is the Chief of the Division of Protective Services of the Department of State and is familiar with the Department's program for repatriating to Germany certain Germans who had been deported to the United States from certain Latin American countries during and immediately after the war and with the action taken by the Department in connection with such program;

That he has examined a copy of the traverse to the defendant's return to the petition for a writ of habeas corpus filed by United States of America, ex rel. Hubert Jaegeler, Relator, against Ugo Carusi, Commissioner of Immigration and Naturalization at Philadelphia, and Carl Zimmerman, District Director for District No. 2, at Philadelphia, particularly the allegations contained in paragraphs 6 through 9 thereof;

That he has no knowledge or information concerning the allegations made in paragraph 6 of the said traverse;

That, with respect to the allegations made in paragraph 7 of the said traverse, he denies that the Department of State intends to prevent Relator from departing to any country of his own choice;

That it is true that there have been circulated and distributed by the Department among the governments of all of the American Republics and Canada lists containing the names of alien enemies, 417 of whom were residents of the United States and 51 of whom were brought to the United States from the other American Republics, whose continued presence in the Western Hemisphere was found, after proper hearings, to be dangerous to continental security, and that it has been suggested by the governments of

those countries that their consulates be instructed not to [fol. 27] grant visas to those persons pending their removal to Germany and that Relator's name appeared on the list of 417 referred to above. In taking such action, the United States was complying with the provisions of Resolution VII of the 1948 Inter-American Conference of Mexico City which called upon the American Governments to prevent such persons from further residing in the hemisphere. A certified copy of a memorandum sent by the Department of State to its missions and transmitted by them to the Foreign Offices of the Governments of the several American Republics and Canada is attached as Exhibit One. A copy of Resolution VII of the 1945 Inter-American Conference of Mexico City is attached as Exhibit Two;

That thereafter the Officers in Charge of the American missions at London, Bern, Stockholm, Paris, Madrid and Lisbon were urged to call the exclusion program to the attention of the Foreign Offices and to transmit to them copies of the lists herein referred to. The governments of these countries were not requested to give assurances such as were asked of the American Republics with respect to the admission of the aliens into their territory. However, the Officers in Charge were instructed to add that this Government was confident that the Governments of the European countries involved would not want to grant visas to the aliens to enter their territories. A copy of a note sent to the Federal Political Department of Switzerland by the American Legation at Bern, June 20, 1946, and representative of notes sent by American missions to the Ministries of Foreign Affairs at London, Stockholm, Paris, Madrid, and Lisbon in June 1946, is enclosed as Exhibit 3;

That the Secretary of State has no authority to require a foreign government to refuse a visa for, or to cancel a visa issued to, any person;

That following the decision of the United States Circuit Court of Appeals for the Second Circuit on January 17, 1947 in the case of *United States, ex rel. Von Heymann v. Watkins*, the Department on March 4, sent a circular telegram [fol. 28] to all American missions in the other American Republics, instructing them to bring to the attention of the Foreign Offices the action of the United States District Court in New York in ordering the temporary release of

certain of the enemy aliens from the American Republics, at the same time reminding the Foreign Offices that this release was a legal technicality and did not mean that the Department had changed its views regarding their dangerousness or that they should be permitted to remain in this Hemisphere, it being the intention of this Government to transport them to Germany as soon as the legal situation permitted.

That on March 7, 1947 another circular telegram was sent to all American missions in the other American Republics, informing them that the enemy aliens from the American Republics not listed in the circular telegram of March 4, 1947 would be given the same opportunity to leave the country as those listed in the earlier telegram.

That on February 6, 1948, subsequent to the memorandum opinion of the United States District Court for the Southern District of New York in the case of *United States, ex rel. Friedrich Bank, Relator v. Watkins, Respondent, and United States, ex rel. Ida A. Bank, Relator v. Watkins, Respondent*, in the United States District Court for the Southern District of New York on August 5, 1947, the Department sent a circular airgram to all American Diplomatic Officers in the other American Republics and Canada quoting in full the opinion of the Court in the Bank case and requesting such officers to furnish the Foreign Offices in each of the Western Hemisphere countries with a note conforming to a draft which was enclosed informing the Foreign Offices that the Department without in any way receding from this Government's commitments made at regional conferences desired to make it clear to all of the American Republics and Canada that the United States Government was in no way preventing the individuals in question from leaving the United States for any other American Republic or Canada, if any of these countries desired to issue a visa [fol. 29] permitting the entry of the individual. A copy of the note transmitted by each of the American missions to the Foreign Offices of the other American Republics and Canada is attached and marked Exhibit Four;

That, with respect to the allegations made in paragraph 8 of the said traverse, no action taken by the Department of State with respect to the Relator or other persons herein referred to was initiated at the request of or as a part of any

program adopted by the Allied Control Council, nor is any action taken either by this Government or by the Control Council with respect to such person considered by the Department to have been in violation of any extradition treaties or of any other international agreements to which this Government was a party at the time such action was taken.

That it is correct that on April 12, 1946 the Emergency Advisory Committee for Political Defense, of which the United States is a member, adopted Resolution XXVI on the Expulsion and Non-Admission of Dangerous Persons. However, the circumstances set forth in the traverse as exempting from expulsion or suspending the effects of the measure are applicable under the terms of the Resolution only in limited instances set forth therein. A copy of this Resolution is attached and marked Exhibit Fi[illegible].

Edward E. Hunt, 7-26-48.

Subscribed and sworn to before me this 26th day of July, 1948. Frances Jean Espe, Notary Public, District of Columbia. My Commission Expires Oct. 1, 1951. (Seal.)

[fol. 30] No. 7968

UNITED STATES OF AMERICA

(Seal)

DEPARTMENT OF STATE

To All To Whom These Presents Shall Come, Greeting:

I Certify, That Edward E. Hunt, whose name is subscribed to the document hereunto annexed, was at the time of signing the same Chief of the Division of Protective Services of this Department.

In Testimony Whereof, I, George C. Marshall, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the City

of Washington, in the District of Columbia, this twenty-seventh day of July, 1948.

George C. Marshall, Secretary of State, by M. P. Chauvin, Authentication Officer, Department of State. (Seal)

[fol. 31] EXHIBIT "1" TO AFFIDAVIT

MEMORANDUM TRANSMITTED BY THE AMERICAN MISSIONS TO THE FOREIGN OFFICES OF THE GOVERNMENTS OF THE SEVERAL AMERICAN REPUBLICS AND CANADA, MAY 1946

In order to cooperate with the other American Republics to secure the safety and welfare of this hemisphere, and to effectuate the principles and policies designed to that end which were adopted by the American Republics at the Mexico City Conference, the Government of the United States is prepared to proceed with its program to exclude from this hemisphere dangerous enemy aliens who are presently in the United States.

The Government of the United States, acting through the Department of Justice has given careful consideration to the cases of a large number of German nationals resident in the United States. After giving each individual an opportunity for a hearing before a board, the Attorney General has determined that 417 persons are dangerous to the public peace and safety of the United States because they have adhered to an enemy government, or to the principles of government thereof, and has ordered that they be removed. It is considered that the exclusion from the hemisphere of these individuals will effectuate the purposes of Resolution VII of the Mexico City Conference. A list of the individuals is provided in Enclosure 1.

There is an additional, smaller group of aliens whom the United States desires to include in this program, consisting of German nationals sent to this country from other American Republics for security internment during the war. Of the aliens originally brought here from the other republics, a high proportion—about three-fourths—have already been [fol. 32] repatriated to Germany with their consent. Of the remaining one-fourth, those from three republics, namely

Bolivia, Equador and El Salvador, have, upon the request of those governments, been returned to those countries for disposition of their cases; 87 percent of the rest have been released from confinement by the Government of the United States because, after consideration of the information in each case, it was determined that although their internment was justified and probably necessary during hostilities they might now safely be allowed to remain in the hemisphere.

There remain in the custody of the Government of the United States a total of 51 cases from ten countries; the names of these individuals are listed in Enclosure 2. In these cases, after the most careful study of all the available evidence, and after a hearing before a board established by the Department of State, the Secretary of State, acting for the President, has concluded that the continued residence of these individuals in the Western Hemisphere would be prejudicial to the security and welfare of the Americas within the meaning of Resolution VII of the Mexico City Conference, and that accordingly, as contemplated by all the American Republics at that conference, these individuals also should be excluded from the hemisphere.

Since making the determinations in these cases, the Government of the United States has received Resolution XXVI of the Inter-American Emergency Advisory Committee for Political Defense dated April 12, 1946. This resolution, entitled "On the Expulsion and Non-Admission of Dangerous Persons," recommends uniform standards to be applied by every American Republic in the conduct of its exclusion program. This Government is pleased to note that the standards which have been applied by the United States to both groups of aliens under discussion approximate closely those recommended by the Committee.

The Government of the United States desires in the near future to issue orders to the persons listed in the enclosures requiring them to depart from the United States within a [fol. 33] period of thirty days, and providing that if they neglect or refuse so to depart they will be removed to Germany. (This procedure is dictated by the internal laws of the United States under which this program is contemplated.) Before issuing such orders, however, the Government of the United States is desirous of receiving from the other American Republics and from the Dominion of Can-

ada assurances that the persons in question will not be permitted to enter their territory. Such assurances by your Government would be greatly appreciated by the Government of the United States as an act of cooperation in the application of Resolution VII. To effectuate these assurances, it is respectfully suggested that precise instructions be sent to the appropriate Consulates in the United States, especially those in New York, New Orleans, and San Antonio or Houston, Texas. The Department of State will gladly furnish copies of the enclosed lists to your Embassy in Washington for distribution to the Consulates.

It would be futile for the United States, or for any other American republic, to exclude a dangerous individual if that individual could proceed to another country in the hemisphere and carry on his activities there. Obviously, a program for the exclusion of dangerous persons such as was contemplated by Resolution VII of the Mexico City Conference, can be effectively carried out only if all the American republics cooperate to that end. The Government of the United States is confident that your Government will act to insure the success of the steps my Government is taking in support of the program to which the American Republics committed themselves at Mexico City.

EXHIBIT "2" TO AFFIDAVIT

Note: Exhibit 2 (Resolution VII of the Final Act of the Inter-American Conference on Problems of War and Peace) *Omitted.*

[fol. 34] EXHIBIT "3" TO AFFIDAVIT

Copy of Note Sent to the Federal Political Department of Switzerland by the American Legation at Bern, June 20, 1946, and Representative of Notes Sent by American Missions to the Ministries of Foreign Affairs at London, Stockholm, Paris, Madrid and Lisbon; June, 1946.

The Legation of the United States of America presents its compliments to the Federal Political Department and,

acting under instructions from its Government, has the honor to invite the attention of the Federal Political Department to steps taken by the United States Government to exclude from the Western Hemisphere German nationals deemed to be dangerous to the security of the Western Hemisphere. These steps are outlined in the attached memorandum, to which are annexed two lists of German nationals mentioned in the memorandum.

In bringing the subject expulsion program to the attention of the Federal Political Department, the Legation is directed to state that the listed individuals have been found by the Government of the United States to be German nationals dangerous to the welfare and security of the Western Hemisphere and that the United States Government intends to repatriate them to Germany—a step which accords with the program of the Allied Control Council for Germany in effecting the return of dangerous Germans. It may be recalled that the latter program, certain aspects of which are embodied in a resolution of the Allied Control Council for Germany dated September 10, 1945, was the subject of the Legation's note No. 2208 of September 22, 1945.

Inasmuch as careful investigation has shown that the [fol. 35] individuals named in the attached lists are dangerous to the security of the Western Hemisphere, the Government of the United States is confident that the Government of Switzerland will not wish to grant them visas to enter its territory, should any of these aliens seek to escape deportation from the United States or attempt to leave Germany after arrival there. The Department of State has expressed its willingness to furnish copies of the enclosed lists for distribution to Swiss consulates. It would be appreciated if the Federal Political Department would be willing to cooperate with the United States Government in the manner set forth above, thereby to assist in attaining the desired objective through the implementation of the expulsion program.

The Legation avails itself of this occasion to renew to the Federal Political Department the assurances of its highest consideration.

Bern, June 20, 1946.

EXHIBIT "4" TO AFFIDAVIT

Note: Exhibit 4 (Letter dated February 26, 1948 to Foreign Minister from Ambassador) *Omitted.*

[fol. 36] EXHIBIT "5" TO AFFIDAVIT

Resolution XXVI of the Inter-American Emergency Advisory Committee for Political Defense, on Expulsion of Dangerous Persons Approved April 12, 1946.

Subsections (a) and (b) of Sec. 3 consider these circumstances as warranting exemption from expulsion.

b. *Personal or family situation.*

In cases where, on account of expulsion or repatriation, the life of the person expelled might be seriously endangered because of illness or advanced age, it is also advised that the measure be suspended. (Section 3, subsection -d) of this Resolution.)

Another special circumstance, among those most frequently invoked to escape expulsion, is that the spouse or children of the dangerous person are nationals of an American Republic.

IN UNITED STATES DISTRICT COURT

AFFIDAVIT IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS WRIT OF HABEAS CORPUS, OR IN THE ALTERNATIVE, TO PREVENT THE TAKING OF THE DEPOSITIONS OF THE SECRETARY OF STATE.

Gordon Butterworth, being duly sworn according to law, deposes and says that:

[fol. 37] He is of Counsel of Record for the Relator, Hubert Jaegler, herein, and

That he is familiar with the pleadings heretofore had herein, and in reply to Defendants' Motion above, avers and replies, as follows:

(1) As to the Motion to dismiss the Writ

This Court, in its Memorandum Opinion, dated July 15, 1947, has held that there is a triable issue of fact, and

awarded an issue. We aver that the Order of Court of July 15, 1947, is res adjudicata of the question as to whether there is a triable issue of fact, and whether there shall be a trial of that issue. The case was at that time ready for trial except that Relator averred certain facts, the proof of which were within the exclusive custody of Defendants. The Court allowed interrogatories to issue, directed to Defendants, to enable Relator to properly prepare and try the said issue of fact, i. e., "was Relator restrained." The Defendants have submitted Affidavits which they claim contain all the material facts to be elicited from the Secretary of State, and that, therefore, there is no further issue to be tried. Examination of the moving Affidavits show, however, that denials do not go to the entire affirmative allegations made on behalf of Relator, but only deny immaterial parts, for instance, the Affidavit of Mr. Hunt does not deny the allegations contained in Paragraph Seven (7) of Relator's Traverse, that "The Attorney General or the State Department *has effectively prevented* * * *, Relator, from departing to any country of his own choice * * *." Mr. Hunt's Affidavit merely denies that the Department of State intends to do this in the future.

Mr. Hunt's Affidavit does not state that he is familiar with the Department's program relating to persons legally [fol. 38] resident in the United States, which is Relator, Jaegler's case.

We averred that the instructions to the Consulates not to grant Visas were suggested by the State Department of the United States, whereas Mr. Hunt states, "It has been suggested by the Governments of those Countries"; this, it is averred is, in itself, a material issue of fact.

It is averred that Resolution VII, of the 1945 Inter-American Conference of Mexico City, (known as the Act of Chapultepec), is neither a law, treaty, nor an effective egreement, but is merely a recommendation which has never been submitted to, nor ratified, nor otherwise approved by Congress. That it was an emergency wartime measure which no longer has validity because it has been superseded by the Inter-American Treaty of Reciprocal Assistance, filed at Rio de Janeiro on September 2, 1947. The

State Department Bulletin for November 23, 1947, at page 983, says:

> "The Act of Chapultepec was, however, a temporary wartime measure in the form of a simple resolution and was concluded prior to the time when the adoption of the Charter of the United Nations set the permitted patterns for regional security arrangements."

While Mr. Hunt has furnished the Court with Exhibit No. 3, distributed to European Countries, he has failed to furnish a copy of a letter submitted to Steamship and Airplane Companies, by the State Department, dated July 1, 1946, which was used to influence said Transportation Companies so that they would refuse to transport alien enemies, including Relator Jaegler . A copy of such circular letter is annexed hereto as Exhibit "A," and made part hereof.

Defendants do not aver that the requests made to the Transportation Companies, or the suggestions to the other Countries had been revoked prior to the notice to depart [fol. 39] served on Relator, Jaegler, or prior to the issuance of the Writ of Habeas Corpus, herein, May 15, 1947.

It is averred that Relator, Jaegler, at such time, tried to obtain Visas and was refused by reason of the fact that his name appeared on the list of 417 enemy aliens, as is more particularly set forth in the Traverse. It is averred that such action by Defendants was not an isolated instance of procedure, but a general course of action applied in many cases.

Defendants have not annexed to their moving papers, in support thereof, any Exhibits or proof that "It has been suggested *by the Governments* of those Countries that their Consulates be instructed not to grant visas." Affiants have affirmed that the suggestion came from our State Department, and not from the other Governments, and an issue of fact is therefore raised.

Affiants aver that the Defendants have not denied the material allegations that the Attorney General and State Department, acting together, have, in the past, prevented Relator from departing from the United States to a country of his own choice. That was the issue raised by the pleadings. There being no denial of these material facts, (1) the

Writ should be sustained, or (2) the Relator should be given an opportunity as provided in the Memorandum Opinion of this Court, dated July 15, 1947, to try the issue of fact, i. e., to prove that there has been actual interference with his right of voluntary departure.

(2) As respects the Defendants' alternative Motion

This Court, on June 8, 1948, allowed the Interrogatories to issue, returnable within sixty (60) days. No Answers to the interrogatories have been filed or served. Instead, Defendants, on August 5, 1948, seek, by Dilatory Motion, more than 10 days thereafter to [fol. 40] avoid the necessity of answering the questions by moving alternatively that the Depositions of the Secretary of State should not be taken. Since Relator has not asked to take the Depositions of the Secretary of State, the Motion is not in order. Defendants are in default, in failing to file Answers to the Interrogatories heretofore approved by this Court, within sixty days from June 8, 1948, Rule 33.

Defendants have not averred what Answers to Relator's Interrogatories are privileged, but answers, ignores or denies knowledge of them.

Wherefore, Relator submits that Defendants' Motions be both dismissed, and the Writ of Habeas Corpus issue, or in the alternative, the Defendants be required to answer the Interrogatories fully, and thereafter the case be listed for trial of the issue of fact.

Gordon Butterworth.

Sworn to and subscribed before me this 3rd day of September, A. D. 1948. Rae W. Dawson, Notary Public. My Commission Expires March 5, 1949. (Seal.)

[fol. 41] EXHIBIT "A" TO RELATOR'S AFFIDAVIT

July 1, 1946.

Alcoa Steamship Company, 17 Battery Place, New York City.

SIRS:

Your attention is called to certain circumstances arising in the conduct of a program in which the Government of the United States is currently engaged.

In Resolution VII of the Final Act of the Mexico City Conference of March 1945, the American republics declared their intention to exclude from the Western Hemisphere Axis nationals whose continued residence in the Hemisphere would be prejudicial to the security and welfare of the Americas.

The United States Government has now determined that certain German nationals presently interned in the United States are dangerous to hemispheric or national security. (The names of these German Nationals, arranged according to the country in which the individuals resided prior to his internment, will be found in the attached lists.) As a result of this determination, the Government is issuing orders directing these individuals to depart from the United States within thirty days, and stating that if at the end of that period the alien will not have effected this departure, he will be removed to Germany.

Such orders, signed by the Secretary of State or by the Attorney General, are currently being served on the aliens involved. It is expected that immediately after the service many of the individuals listed, especially among those who previously resided in South or Central America will apply for transportation to one of the other American republics or to Canada. Some of these aliens will undoubtedly pre-[fol. 42] sent visas purporting to grant them permission to enter one of these countries. You are informed, however, that the Governemnt of Canada and almost all of the governments of the other American republics have indicated that in order to further hemispheric security they will not grant visas to enemy aliens excluded by the United States, and will nullify any visas already issued to such individuals.

It is important, therefore, that you exercise great care in examining visas presented by any of the aliens listed, to make certain that such documents are currently valid, and that it is the present intention of the Government which issued the visa to allow the individual to enter its territory. Documents ante-dating June 1, 1946, for example, may, in many instances, prove to have been cancelled by the issuing government. In any case as to which doubt exists, the Alien Enemy Control Section of the Department of State will gladly make the inquiries necessary to determine whether the government in question will admit the individual seeking transportation.

This letter is not to be construed as a request that you deny to any individual transportation to a country which is actually willing to admit him.

Very truly yours, for the Secretary of State: Louis Henkin, Acting Chief, Alien Enemy Control Section.

IN UNITED STATES DISTRICT COURT

ORDER

Sur Defendants' Motion to Discharge the Writ and, in the alternative, to prevent the taking of the deposition of the Secretary of State.

And now, to wit, this 30th day of September, 1948, upon [fol. 43] consideration of the foregoing motion, it is ordered that Defendants' Motion to Discharge the Writ be and is hereby denied.

It is further ordered that Defendants' Motion to prevent the taking of the deposition of the Secretary of State be and is hereby granted.

By the Court, Kirkpatrick, C. J.

In United States District Court

Petition for Rehearing on Defendants' Motion to Discharge the Writ, Etc.

The Petition of the defendants, by Gerald A. Gleeson, United States Attorney for the Eastern District of Pennsylvania respectfully represent:

1. That the above captioned proceedings is a Petition for a Writ of Habeas Corpus filed by the relator on May 15, 1947:

2. That on August 13, 1948 the defendants moved to discharge the Writ and in the alternative, to prevent the taking of the depositions of the Secretary of State:

3. That on September 30, 1948, your Honorable Court made an Order, denying defendants' Motion to Discharge the Writ, etc.;

4. That since the making of the Order of September 30, 1948, by your Honorable Court, the exact questions raised by defendants in their Motion to Discharge the Writ were passed upon by the United States Circuit Court of Appeals, for the Second Circuit in the case of United States of Amer-
[fol. 44] ica, ex rel. Dorfler et al. vs. Watkins, 171 F. (2d) 431, the determination in said case being adverse to the position taken by the relator in the above captioned matter:

5. That on May 31, 1949 a petition by Dorfler for certiorari was denied by the Supreme Court:

6. That your Petitioners believe that in view of the determination made in the above mentioned Dorfler case by the Circuit Court of Appeals for the Second Circuit and by the Supreme Court of the United States, the Order made by your Honorable Court should be reconsidered and re-argument had on the questions raised by defendants in their Motion to Discharge the Writ:

Wherefore, your petitioners pray that your Honorable Court order the Motion to Discharge the Writ for reargument and reconsideration.

Gerald A. Gleeson, United States Attorney.

In United States District Court

Answer to Petition for Rehearing on Defendants' Motion to Discharge the Writ of Habeas Corpus

Relator, by his counsel of record, George C. Dix and Gordon Butterworth, Esquires, makes answer to Defendants' Petition to Discharge the Writ and avers as follows:

1. The facts in Paragraph 1 of the Petition are admitted. [fol. 45] 2. The facts in Paragraph 2 of the Petition are admitted.

3. The facts in Paragraph 3 of the Petition are admitted.

4. The facts set forth in Paragraph 4 of the Petition are denied. It is averred that the Circuit Court of Appeals for the Second District rendered an Opinion in the case of United States of America, Ex Rel. Dorfler, et al. vs. Watkins, 171 F. (2) 431, but Relator avers that the facts in that case were not the same as the facts in the instant case and are, therefore, not governing.

5. The facts set forth in Paragraph 5 of the Petition are admitted.

6. Denied. Relator replies and avers that the decision in the Dorfler case is not authority for a similar decision in the instant case and avers that the Order previously made by your honorable Court on September 30, 1948 should not be reconsidered and reargued on the authority of the said Dorfler case.

George C. Dix, Gordon Butterworth, of Counsel.

In United States District Court

Order

And Now, to wit: this 9th day of October, 1950, this matter having come before the court on respondents' Motion for a reargument and reconsideration of the Motion of August 5, 1948 to discharge the writ, it is

[fols. 46-49] Ordered and Decreed

that reargument upon the Motion of August 5, 1948 is Granted, and it is further

Ordered and Decreed

that respondents' Motion of August 5, 1948 be Granted, and it is further

Ordered and Decreed

that the Writ of Habeas Corpus issued in the above matter on May 15, 1947 be and the same is hereby Dismissed, and it is further Ordered that the relator be and hereby is remanded to the custody of the respondents.

By the Court, Kirkpatrick, J.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL

Notice is hereby given by Hubert Jaegeler, Relator above, by his Counsel of Record, Gordon Butterworth, he hereby appeals to the Third Circuit Court of Appeals from the Order of the United States District Court for the Eastern District of Pennsylvania, entered in this action on October 9, 1950 dismissing the Writ of Habeas Corpus issued in the above entitled matter on May 15, 1947 and remanding the Relator to the custody of the Respondents.

Gordon Butterworth, Esquire, Attorney for Relator,
1500 Walnut Street, Philadelphia 2, Pa.

December 5, 1950.

[fol. 50] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,373

UNITED STATES OF AMERICA ex rel. HUBERT JAEGELER, Appellant,

vs.

UGO CARUSI, Commissioner of Immigration and Naturalization, and KARL I. ZIMMERMAN, District Director Immigration and Naturalization Service, Appellees.

Appeal from the Final Order of the United States District Court for the Eastern District of Pennsylvania, Dismissing Habeas Corpus.

Argued March 5, 1951.

Before Goodrich, McLaughlin and Hastie, Circuit Judges

OPINION OF THE COURT—Filed April 2, 1951

By McLAUGHLIN, Circuit Judge.

This is an appeal from the dismissal of a writ of habeas corpus by the court below.

Appellant is a German national. He came to this country as a quota immigrant in 1925. With the exception of a visit to Germany in 1933 he seems to have been here ever since. On December 9, 1941, he was taken into custody as an enemy alien. Following a hearing before an Alien Enemy Hearing [fol. 51] Board at Philadelphia, and on the Board's recommendation to the Attorney General, appellant was interned for the duration of the war emergency.

In October 1945, at his request, he was given a hearing before a Repatriation Hearing Board. That Board recommended his removal from the United States because "he was determined to be dangerous to the public peace and safety of the United States." On May 3, 1946 appellant was notified by the Attorney General of a direction for his removal. On April 2, 1947 he was advised by the Immigration and Naturalization Service of the Department of Justice that under the terms of his removal order he could

proceed to any country of his choice "* * * if arrangements can be made." On April 15, 1947 he was given a thirty day parole to afford him an opportunity to make such arrangements. He was further advised that if he was unsuccessful in departing from the United States immediate steps would be taken to proceed with removal arrangements and that no extension of the thirty day parole could be granted because of failure to secure permission to enter some other country.

On May 15, 1947 his petition for a writ of habeas corpus was filed. The writ was allowed on June 16, 1947. Thereafter there was a motion to dismiss which was denied. A motion for reargument was also denied. Following that, considerable time necessarily elapsed in connection with awaiting the progress to, and decision by, the Supreme Court of a case which in some respects resembled the one at bar.[1] Finally, on October 9, 1950, the writ of habeas corpus was dismissed.

Appellant in his first point complains of the hearings accorded him on the ground that they did not conform to judicial procedure.

The President's power to act, as he here acted, stems out of the Alien Enemy Act of 1798 which, with some inconse- [fol. 52] quential amendments, is the law today. That statute reads:

> "Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the

[1] United States ex rel. Dorfler et al vs. Watkins, 2 Cir., 171 F2d 431, cert. denied 337 U. S. 914.

United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety." (Act of July 6, 1798, 1 Stat. 577, R.S. Sec. 4067, as amended, 40 Stat. 531, 50 U.S.C. Sec. 21.).

Proceeding under this Act, in 1945, the President issued his Proclamation 2655, 10 Fed. Reg. 8947. This directed the removal from the United States of all alien enemies "who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States". It was under that proclamation that appellant's removal was ordered.

From the beginning, the Act of 1798 has been uniformly recognized as not subject to judicial review. Case of Fries, [fol. 53] C.C.D.Pa., 9 Fed. Cas. No. 5126; Brown vs. United States, 8 Cranch 110; Lockington vs. Smith, C.C.D.Pa., 15 Fed. Cas. No. 8448.[2] And as Mr. Justice Frankfurter said in Ludecke vs. Watkins, 335 U. S. 160 at 165 and 166:

"The power with which Congress vested the President had to be executed by him through others. He provided for the removal of such enemy aliens as were "deemed by the Attorney General" to be dangerous. But such a finding, at the President's behest, was likewise not to be subjected to the scrutiny of courts. For one thing, removal was contingent not upon a finding that in fact an alien was 'dangerous.' The President was careful to call for the removal of aliens 'deemed by the Attorney General to be dangerous.' But the short answer is that the Attorney General was the President's voice and conscience. A war power of the

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[2] See also United States ex rel. Kessler et al. vs. Watkins, 2 Cir., 163 F.2d 140; United States ex rel. Hack vs. Clark, 7 Cir., 139 F.2d 552; United States ex rel Schlueter vs. Watkins, 2 Cir., 158 F.2d 853; Citizens Protective League vs. Clark, U. S. App. D. C., 155 F.2d 290.

President not subject to judicial review is not transmuted into a judicially reviewable action because the President chooses to have that power exercised within narrower limits than Congress authorized."

Appellant next urges that his right to voluntary departure has been effectively nullified by the action of the United States in requesting foreign governments not to grant him a visa and in notifying the Alcoa Steamship Company of refusal by friendly governments of visas. He asks for opportunity to prove that visas were refused him because of those acts.

As above outlined, the Attorney General advised appellant that under the terms of the removal order affecting him "* * * you may proceed to any country of your choice, if arrangements can be made". Appellant offered to show below that he unsuccessfully attempted to secure a de- [fol. 54] parture visa to every or any known, what he calls, "friendly country outside of the United States." A letter from the State Department to Alcoa Steamship Company is an exhibit in the case. In that letter the Department notified the steamship company that certain German nationals, including appellant, had been determined to be dangerous to hemispheric or national security; that the United States "* * * is issuing orders directing these individuals to depart from the United States within thirty days and stating that if at the end of that period the alien will not have effected this departure, he will be removed to Germany." The letter suggested that great care be taken to make certain that visas presented by any of the aliens listed were currently valid. It concluded by stating, "This letter is not to be construed as a request that you deny to any individual transportation to a country which is actually willing to admit him."

It is not disputed that the appellant was notified to leave the United States and was given at least thirty days to accomplish that result. But, says appellant, the actions of the United States in fact prevented him from so doing. Appellant alleges this as the sole reason his departure was rendered impossible.

The government concedes that it sent out to friendly governments and to the particular steamship company, information that appellant was deemed a dangerous alien

enemy. That notification did not necessarily preclude acceptance of a person so listed by one or more of the countries circularized. And there is no contention by appellant that the United States similarly advised all countries throughout the world. Among other nations not so notified are Germany, Austria, India, Yugoslavia, Iraq, China, Russia, Czechoslovakia, Roumania, Hungary, Bulgaria and Albania. Appellant objects to going back to Germany where he was born. Nor does he wish to go to Russia or to any of its satellites. But he would seem to have a wide choice aside from those nations. For example, Austria, India and [fol. 55] Yugoslavia. There is no pretense of an endeavor to obtain a departure visa for any of those countries. It would seem that appellant was faced with no real dilemma. He just did not bother. His choice was not confined to Germany or Russia and those unfortunate lands dominated by the latter. Even if it had been, the statute does not provide that the alien subject to its mandate be cleared to whatever nation he might select. The Act merely allows that alien to leave this country voluntarily. As was said in United States ex rel. Dorfler et al. vs. Watkins, supra, at p. 432, "So long as there is any foreign country to which he could have gone, his failure to go there is a 'neglect' or 'refusal' to depart voluntarily. Hence a communication by the State Department to a foreign country, which that country may or may not heed, cannot be regarded as an unlawful restraint on the alien's voluntary departure. The relators have had ample time to arrange to leave the United States and have made no showing that it was impossible for them to do so."

As indicated in the above quoted language from the Dorfler decision, the action of the United States in warning its neighbors on this continent and its friends abroad regarding appellant cannot be fairly regarded as infringing on any obligation it may owe appellant. This nation has the right and duty to protect itself directly and indirectly against dangerous alien enemies. The Attorney General, functioning for the President, has deemed appellant to be in that category. He is being removed from the United States for that reason. Ordinary precaution requires that our allies and potential allies be warned in order that they may at least have the opportunity of passing upon the advisability of permitting the entrance and acceptance of such person into their territory. Our government cannot be

justly said to be thereby interfering with Jaegeler's choice of domicile. The situation was created by appellant himself and merely recognized by the Attorney General for what he deemed it to be. Thereafter under the powers properly delegated to him by the President he took steps [fol. 56] to prevent it from causing harm to the United States or its allies.

The opinion in United States ex rel. Von Heymann vs. Watkins, 2 Cir., 159 F. 2d 650, 653, is in nowise contrary to the views expressed. In that decision the court considered that the relator was being held in restraint on Ellis Island for the purpose of removal to Germany. The court found that under those circumstances it did "* * * not appear that this relator has ever refused, or except because of his internment, ever neglected, to depart." In the present appeal, Jaegeler had been served with the thirty day order and was in fact paroled during that time to give him the chance, if he desired, of departing voluntarily. United States ex rel. Hoehn vs. Shaughnessy, 2 Cir., 175 F. 2d 116, 117, cert. denied 338 U. S. 872, is also cited by appellant. There, with the same sort of notice to foreign governments involved, the alien did not try to leave this country of his own free will. The court said that, assuming such notice, "* * * it would not help the appellant in the absence of any indication that he tried to depart voluntarily and was, for that reason, unable to do so." As already pointed out, it is enough to say in this connection that there is a total absence of a bona fide attempt by Jaegeler, even on his own invalid theory, to enter any one of several countries open to him and not included in the ideological objections he makes.

Lastly, appellant argues that the removal order was in violation of international treaties and agreements to which the United States was and is a party. There is no merit in the point and no need for discussion of it.

The order of the District Court of October 9, 1950, dismissing the writ of habeas corpus, will be affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

[fol. 57] UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 10,373

UNITED STATES OF AMERICA ex rel. HUBERT JAEGELER, Appellant,

vs.

UGO CARUSI, Commissioner of Immigration and Naturalization, and KARL I. ZIMMERMAN, District Director Immigration and Naturalization Service

On Appeal from the United States District Court for the Eastern District of Pennsylvania

Present: Goodrich, McLaughlin and Hastie, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of October 9, 1950 of the said District Court in this case be, and the same is hereby affirmed.

Attest:

Ida O. Creskoff, Clerk.

April 2, 1951.

Endorsements: Judgment affirming Order of the District Court Received and Filed April 2, 1951. Ida O. Creskoff, Clerk.

[fol. 58] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 59] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner,

It is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 29th, 1951.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 27th day of June, 1951.

[fol. 58] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 5, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark took no part in the consideration or decision of this application.

(8320)